

Application No.: 09/817,682

Docket No.: JCLA5662-CIP-R2

**REMARKS****Present Status of the Application**

The Office Action rejected claims 1-6. Specifically, the Office Action rejected claim 6 under 35 U.S.C. 102(e) as being anticipated by Kepler et al. (U. S. Patent 6,037,671; hereinafter Kepler). The Office Action rejected claims 1-5 under 35 U.S.C. 103(a) as being unpatentable over Kepler. Claims 1-6 remain pending in the present application, and reconsideration of those claims is respectfully requested.

**Discussion of Claim Rejections under 35 USC 102**

Claim 6 is rejected under 35 U.S.C. 102(e) as being anticipated by Kepler. Applicants respectfully traverse the rejections for at least the reasons set forth below.

As described in specification (i.e. page 2, lines 1-6; or even see claim 3; also see previous response to the first Office Action), the present invention is to configure the alignment mark. As a result, the alignment mark is distant from the device trench, such as the shallow trench isolation structure 110 in FIG 1, not belonging to the alignment mark and certainly not used for alignment. The shallow trench isolation structure, as known by the ordinary skilled artisan in semiconductor, is used to isolate the semiconductor device, such as the MOS transistor. In other words, *the trench is not belonging to the alignment mark, as recited in claim 6, is therefore not used for alignment.*

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In re Kepler, *Kepler clearly discloses that the alignment marks comprises a plurality of first sections 22 and a plurality of the second sections 23* (col. 4, lines 33-37). In Fig. 3 and Fig. 4, the several sections 23 are shown. However, several sections 22 and several sections 23 form the alignment mark pattern. The Final Office Action provides a drawing and indicates on the drawing by the leftmost section as the alignment mark, and the middle section as a trench not belonging to the alignment mark in *leftmost section*. Applicant respectfully disagrees.

The leftmost section 23 and the middle section 23 are *two different parts of the whole alignment mark*. Even though the middle section is not belonging to the leftmost section, the *middle section 23 is still a part of the whole alignment mark* and is still used for alignment.

With at least the foregoing reasons, Kepler does not disclose the features of the present invention, and therefore claim 6 of the present invention is distinguishable over Kepler.

#### **Discussion of Claim Rejections under 35 USC 103**

The Office Action rejected claims 1-5 under 35 U.S.C. 103(a) as being unpatentable over Kepler. Applicants respectfully traverse the rejections for at least the reason set forth below.

With at least the reasons applied to claim 6, both two sections (leftmost and middle sections) 23 and section 22 in FIG. 4 are parts of the whole alignment mark. Even though the two alignment sections (leftmost and middle sections) 23 are separated, they are still parts of the whole alignment mark. The *claimed trench is known as a device trench*, belonging to a portion of device structure *but not for use in alignment*.

*Further with respect to claim 3*, the trench is further defined as the shallow trench isolation

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structure, which is usually used to isolate the MOS device, and is not used for alignment.

It is respectfully believed that the Office Action has improperly construed the disclosure in Kepler, and hindsight has been involved also.

For at least the foregoing reasons, Applicant respectfully submits that independent claims 1 and 6 patently define over the prior art, and should be allowed. For at least the same reasons, dependent claims 2-5 patently define over the prior art references as well.

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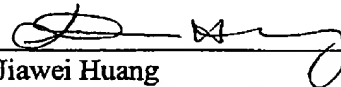
**CONCLUSION**

For at least the foregoing reasons, it is believed that all the pending claims 1-6 of the invention patently define over the prior art and are in proper condition for allowance. If the Examiner believes that a telephone conference would expedite the examination of the above-identified patent application, the Examiner is invited to call the undersigned.

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